



# RAVALLI COUNTY ATTORNEY

205 Bedford Street, Suite C, HAMILTON, MT 59840-2853  
Phone (406) 375-6750 Fax (406) 375-6731

**TO:** Jennifer De Groot, Planning  
**CC:** County Commissioners ✓  
**FROM:** Alex Beal, Deputy *AB*



**DATE:** July 19, 2007

**RE:** Potential Canyon Paradise Heights VZD Violation

You have forwarded me copies of allegations of violations by a member of the Canyon Paradise Heights VZD, the Romanos. The Romanos plan to create a gravel parking area upon which they would park heavy machinery used for a paving business. Mrs. Romano would act as a bookkeeper from her home location, otherwise, no commercial activity would take place at the home other than the ingress/egress of heavy equipment. In relevant part the VZD regulations state:

"Home based businesses which do not create a nuisance as defined by Montana law are allowed. The business can have no more than three non-resident employees. The business shall be conducted within the home or within a shop less than 1500 square feet in size which may be separate from the residence." It is my understanding that there are no plans for a shop of any size. The VZD prohibits a number of things, the relevant ones being "commercial businesses other than home based...post and pole plants...open storage of junk, junk cars...mini storage businesses."

Montana law defines a criminal public nuisance in MCA § 45-8-111 (2005) and a civil public nuisance in MCA § 27-30-101 (2005). The former defines a public nuisance as "a condition which endangers safety of health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of person." Similarly, the later statute states that a nuisance is "[a]nything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property..."

A violation of a zoning ordinance would not itself make something a nuisance. For this conduct to be considered a nuisance, it would need to, for instance, be offensive to the senses independently of the VZD rules. The criminal public nuisance statute is copied from a California law, the commission comments to which state that there are generally two categories:

- (1) the maintenance of manufacturing plants, entertainment resorts and the like, which by virtue of excessive noise, noxious gases, etc., annoy or offend groups or areas of the community; and
- (2) the conduct of resorts where people gather for illegal or immoral purposes.

There is nothing about creating a gravel parking area that I can see causing a public nuisance. That leaves only the ingress/egress and storage of heavy machinery. I would not imagine that the equipment would be moving in and out of the property more than once per day, less often than that, likely. As such, it is hard to argue that creates an obstruction to the free use of the neighbors property, or endangers health or safety. I do not believe that the ingress/egress of trucks, at least at those volumes can constitute a public nuisance.

Therefore, the ingress/egress would need to constitute conducting a "commercial business" to be a violation of the zoning district. While the heavy machinery is certainly involved in a commercial business, there is no commercial business taking place at the home (with the possible exception of the bookkeeping). In my mind this is very similar to a trucker parking his big-rig at his home when he is off the road. It is certainly a very large piece of equipment used for a commercial purpose, but the ingress/egress of the property with the truck is not commercial. Expanding that analogy out, that would seem to allow for the parking of heavy equipment, at least by the residents of the property, but not necessary by others. Those pieces of heavy equipment being brought to and from the property by non-residents, however, would seem to touch on commercial activity, because those people would be paid to move the equipment in and out.

What constitutes a "home-based business" is not the simplest question either. Generally speaking though, it appears from a review of cases in other jurisdictions (I can find no Montana law on point) that a "home-based business" is generally one where the majority of the activity takes place at the home, such as a day-care. While no cases define the term, it seems accurate to say that "I operate a home-based business" and "I work from home" are synonymous. As such, this is not a "home-based business." Therefore, the commercial activity of moving heavy machinery onto and off of the property, by persons other than the residents, would be a violation of the VZD rules.